

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 08-22-13

Rule ID(s): 5519

File Date: 8/29/13

Effective Date: 1/29/14

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle F. Walker
<b>Address:</b>	9 <sup>th</sup> Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

**Revision Type (check all that apply):**

- ☐ Amendment  
☐ New  
☒ Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-. 10	Initial Evaluations

Special Education Programs and Services  
Chapter 0520-01-09  
Repeal

Rule 0520-01-09-.10 Initial Evaluations is amended by deleting the regulation in its entirety.

Authority: T.C.A. §§ 49-10-101 and 49-10-701.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice				X	
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on April 19, 2013 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: August 7, 2013

Signature: \_\_\_\_\_

Name of Officer: Dannelle F. Walker

Title of Officer: General Counsel



MY COMMISSION EXPIRES:  
January 9, 2016

Subscribed and sworn to before me on: 8/7/13

Notary Public Signature: Phyllis E. Childress

My commission expires on: \_\_\_\_\_

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

8-20-13

Date

Department of State Use Only

Filed with the Department of State on:

8/29/13

Effective on:

1/29/14



Tre Hargett  
Secretary of State

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**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The 2004 reauthorization of IDEA provided that initial evaluations for determination of eligibility for special education "must be conducted within 60 (calendar) days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe" 20 U.S.C. §1414(a)(1)(C) and 34 C.F.R. §300.301(c). When the State Board of Education revised Tennessee Rules and Regulations Chapter 0520-01-09, Special Education Programs and Services, effective February 2008, it adopted by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety, unless otherwise provided, as the policies and procedures for administration of special education programs and services in the state. Because Tennessee had an evaluation timeframe in place, an exception to the adoption by reference was Chapter 0520-01-9-.10, originally adopted in 2001, which provides that "initial evaluation for determination of eligibility for special education must be conducted and an initial educational placement must be made within forty (40) school days of the local education agency's receipt of informed parental consent for an initial evaluation." Therefore, Tennessee has followed a timeframe of forty (40) "school days" instead of sixty (60) "calendar days".

On April 11, 2012, the United States Department of Education's Office of Special Education Programs (OSEP), in *Letter to Reyes*, indicated there is no exception in 34 CFR § 300.301(d) regarding initial evaluations that would permit the applicable initial evaluation timeline to be suspended because of a school break. OSEP further indicated that IDEA contemplates that the initial evaluation of a child suspected of having a disability not be unreasonably delayed so that eligible children with disabilities are not denied a free appropriate public education. This guidance was provided to North Carolina, which, like Tennessee, had an established state timeframe that allowed suspension of the timeline during school breaks.

34 C.F.R. §300.301(c) provides that an initial evaluation for determination of eligibility for special education must be conducted within sixty (60) "calendar days" of the local education agency's receipt of informed parental consent and 34 C.F.R. §300.323(c) provides that an initial meeting to develop an IEP must be conducted within thirty (30) "calendar days" of the determination of eligibility.

Deletion of Rule 0520-01-09-.10 will result in adoption by reference of 34 C.F.R. §300.301(c) and 34 C.F.R. §300.323(c) regarding initial evaluations and development of IEPs. This rule change will remove the complications and confusion caused by the dependence on "school days", the timing of which is based on various local education agency calendars. Students, parents, and local education agency personnel will benefit from this change because it will alleviate the complication caused by school closures for holidays, fall and spring breaks, summer breaks, inclement weather and illness outbreaks which must be considered when "school days" are involved in time calculation. Aligning the state regulation with the federal regulation will make Tennessee's state data comparable with data collected by the U. S. Department of Education, Office of Special Education Programs for all other states implementing the standard federal initial evaluation timeline requirement. Tennessee's regulations for reevaluation are already fully aligned with federal IDEA regulation.

The sixty (60) calendar day evaluation timeframe does not apply in the following instances: the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or, the child enrolls in another local education agency after the timeframe has begun and a determination of eligibility was not completed by the local education agency that commenced the initial evaluation process, the succeeding local educational agency is making sufficient progress to ensure completion of the evaluation, and the parent and the succeeding local education agency agree on a specific timeframe within which the evaluation will be completed.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

34 C.F.R. §300.301(c) and 34 C.F.R. §300.323(c)

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

State Department of Education, Local Education Agencies (LEAs) overseen by the Department of Education, Special Education Teachers, Special Education Students, Parents of students receiving special education services

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Ms. Dannelle F. Walker  
TN State Board of Education

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Ms. Dannelle F. Walker  
TN State Board of Education

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Ms. Dannelle F. Walker  
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9<sup>th</sup> Floor, 710 James Robertson Pkwy  
Nashville, Tennessee 37243  
615-253-5707  
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

On December 11, 2012, State Board of Education staff held a rule making hearing for the purpose of receiving comments on the proposed rule change from interested parties and stakeholders.